

EXHIBIT C

to Big E's Statement of Undisputed Facts
in Support of Motion for Summary Judgment

Excerpts from the Deposition of Keith Davis

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----)
GCC MOVING, LLC and GARY)
COOK d/b/a GCC MOVING)
Plaintiff)
vs.) C.A. NO. 1:16-cv-11538
ESTES EXPRESS LINES, CORP.)
D/b/a, alias, BIG E.)
TRANSPORTATION; and BIG E)
TRANSPORTATION, LLC d/b/a,)
alias ESTES EXPRESS LINES;)
JOHN DOES 1-10, JANE DOES)
1-10 and XYZ CORPORATIONS)
1-10)
Defendants)
-----)

DEPOSITION OF KEITH DAVIS, a Witness in the
above-entitled case, taken on behalf of the
Plaintiff, before Patricia Quirk, CSR, Notary
Public in and for the State of Rhode Island, at
the offices of Brainsky Levinson, LLC, 1543 Fall
River Avenue, Suite 1, Seekonk, MA 02771, on
August 17, 2017, scheduled at 10:00 a.m.

PRESENT:

FOR THE PLAINTIFF....BRAINSKY LEVINSON, LLC
BY: MATTHEW I. SHAW, ESQUIRE

FOR THE DEFENDANT....SCOPELITIS GARVIN LIGHT HANSON &
FEARY
BY: JAMES T. SPOLYAR, ESQUIRE

Keith Davis

3

(DEPOSITION COMMENCED AT 10:10 a.m.)

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties that the Witness will read and sign the deposition transcript under the pains and penalties of perjury; that the reading and signing is deemed waived if not accomplished within 30 days of transcript delivery, and that the sealing, filing and certification of the deposition transcript are waived.

It is further stipulated and agreed that all objections, except objections to the form of the questions, and motions to strike, will be reserved until the time of trial or pretrial hearing.

KEITH DAVIS

The Deponent, having been satisfactorily identified and duly sworn by the Notary Public, deposes and testifies as follows:

EXAMINATION BY MR. SHAW

Q. Good morning, Mr. Davis.

A. Good morning.

Q. My name is Matthew Shaw, we just met a moment ago.

I represent GCC Moving and Gary Cook in a lawsuit that's been filed in the Commonwealth of

Massachusetts, entitled Gary Cook d/b/a GCC, Big E

Keith Davis

8

1 MR. SHAW: Can you repeat question?

2 (QUESTION READ BACK)

3 MR. SPOYLAR: Same objection.

4 A. Big E Transportation provides delivery
5 services to Estes Express Line. Estes Express Line
6 is a customer of Big E Transportation, so we do
7 provide services to Estes Express Line.

8 Q. Big E provides services to Estes Express Line?

9 A. Yes.

10 Q. You said Big E is a customer of Estes Express Lines
11 or vice versa?

12 A. Vice versa.

13 Q. So Estes Express Lines is a customer of Big E?

14 A. Yes.

15 Q. The delivery services provided by Big E, are those
16 all through contractors?

17 A. Yes.

18 Q. And those contractors work in the four major
19 regions that you've described earlier?

20 A. That's correct.

21 Q. Now, Estes Express Lines has its own delivery
22 drivers; is that correct?

23 A. Yes, they do.

24 Q. And are those employees of Estes Express?

25 MR. SPOYLAR: Object to the form of

Keith Davis

11

1 contractors?

2 MR. SPOLYAR: Same objection.

3 A. I did not.

4 Q. When you were regional manager for Big E, what
5 region did you manage?

6 A. The Southeast.

7 Q. Could you describe for me how big the Southeast
8 region is in terms of the number of contractors and
9 the number of terminals, if that's an accurate way
10 to describe it?

11 A. The number of contractors would be the best
12 way to explain it, anywhere between 25, maybe,
13 roughly 25 contractors, so --

14 Q. And do those contractors work out of various
15 terminals in the Southeast region, or how do they
16 perform their duties?

17 A. They didn't operate out of any terminals. We
18 have some dedicated markets that we service for
19 Home Depot that is throughout the southeast. We
20 service their stores directly. We also service
21 Estes Express Lines and certain markets as well.

22 I don't have, as far as the detailed
23 number of locations that we serve for Estes Express
24 Lines because I don't have it in front of me, but
25 just various Estes Express Lines locations and Home

Keith Davis

12

1 Depot locations.

2 Q. So Big E, and I'm not trying to, you know, I'm not
3 trying to trick anyone here, I'm just trying to get
4 a better understanding of the structure of the
5 company.

6 So in the Southeast region, Big E would,
7 as a customer of Estes Express would service
8 various Estes Express terminals; is that accurate
9 or?

10 A. Well, Big E isn't a customer of Estes Express.

11 Q. Oh, I'm sorry, Estes Express is a customer of Big E?

12 A. Yes.

13 Q. So as a customer of Big E, would Big E's
14 contractors work out of Estes Express terminals?

15 A. They didn't work out of Estes Express
16 terminals, we would go to their terminals and pick
17 up freight.

18 Q. Okay. Okay, all right. Do you know how many Estes
19 Express terminals are in the Southeast region?

20 A. I do not.

21 Q. This structure in the Southeast, is it roughly the
22 same structure in the four regions across the
23 country?

24 A. Generally, yes.

25 Q. To the extent you know, I want to ask you some

Keith Davis

26

1 else?

2 A. Our vice president.

3 Q. Who is the VP?

4 A. Steve Sproles.

5 Q. And once a determination is made with respect to
6 whether additional contractors should be retained,
7 what happens next, generally speaking?

8 A. You know, generally speaking, that once we
9 come to an agreement on what's -- how many
10 contractors we need or -- to successfully service
11 the market, then we are going to get the ball
12 rolling and start working on getting the market set
13 up as far as bringing on contractors and stuff.

14 Q. And is there anyone in a particular region that
15 would help you do that?

16 A. Well, depending on what region it is, that
17 regional manager would assist, yes.

18 Q. In 2012, do you know who the regional manager was
19 in the Northeast?

20 A. Yes.

21 Q. Who was that?

22 A. Michael Rail.

23 Q. The regional manager -- is the regional manager an
24 employee of Big E --

25 MR. SPOYLAR: Object to the form of

Keith Davis

27

1 the question.

2 Q. -- or contractor or some other status?

3 MR. SPOLYAR: Object to the form of
4 the question as requiring a legal conclusion. Go
5 ahead.

6 A. At the -- yes, Michael Rail was a Big E
7 employee.

8 Q. So in 2012, if there was a determination as to
9 whether the Northeast region required additional
10 contractors, Mike Rail would have helped facilitate
11 that?

12 MR. SPOLYAR: Objection: vague and
13 speculation. Go ahead.

14 A. Repeat it one more time, please.

15 Q. In 2012, when Mike Rail was the regional manager of
16 the Northeast region, once a determination that
17 additional contractors were required in the
18 Northeast region, then Mike Rail, would he have
19 helped facilitate acquisition of additional
20 contractors?

21 A. Uh-huh.

22 Q. And the need for additional contractors, regardless
23 of what region, I imagine that's pretty fluid,
24 changes day-to-day, month-to-month, year-to-year;
25 is that accurate, or --

Keith Davis

30

1 that -- strike that.

2 The various customer needs and volume and
3 amount of freight, are those types of fluctuations
4 that a regional manager would know about in a
5 particular region?

6 A. Can you repeat it one more time, please?

7 Q. The types of freight volume, customer needs,
8 routes, things of that nature, is that the type of
9 information that a regional manager would keep
10 track of?

11 A. Yeah, he's -- that regional manager would be
12 involved in the -- in each operation or each market
13 that we have within that region, so, yes, he's
14 going to be involved in that, so --

15 Q. Just like any company, your regional manager keeps
16 -- has knowledge of a specific market data and that
17 data is sent and transmitted to his boss -- or
18 transmits to his boss, and eventually makes it to
19 you, and Big E will track this type of information
20 for all the regions across the country?

21 A. Well, yes, it's tracked on a weekly basis
22 through billing reports, so.

23 Q. Can you describe for me the day-to-day duties of a
24 regional manager, generally speaking?

25 A. Just general day-to-day operations, they are

Keith Davis

31

1 going to be in contact with our customers, in
2 contact with our contractors, and just being that
3 liaison between a service need and services being
4 provided.

5 Q. And in the Northeast region in 2012, one of those
6 customers of Big E Transportation would have been
7 Estes Express?

8 A. Say it one more time.

9 Q. In 2012, in the Northeast region, would one of
10 those customers have been Estes Express Lines?

11 A. Yes.

12 Q. It sounds like the Northeast region is a fairly
13 large geographical region, does -- is there just --
14 in 2012, was there just one regional manager?

15 A. Yes.

16 Q. And did that regional manager have an assistant or
17 a deputy or somebody who would help assist in the
18 duties?

19 A. No.

20 Q. Is there a -- was there a particular office that
21 the regional manager would work out of in 2012?

22 A. He would work from home.

23 Q. From home, okay. How much travel would be involved
24 for a regional manager?

25 A. Let's see, I would say a good week out of the

Keith Davis

32

1 month, so, you know, a couple of days here, a
2 couple of days there. I would say a good seven
3 days a month they are traveling through the week.

4 Q. Where would they travel to?

5 A. Just to various markets that we would be
6 servicing, checking with our customers and to make
7 sure the services are up to expectation.

8 Q. In the Northeast region in 2012, do you know who
9 the customers of Big E were?

10 A. I know of some of them, yes, that I recall.

11 Q. Can you give me the names?

12 A. We've got Estes Express Lines and Advance
13 Auto, right off the top of my head, so.

14 Q. Do you have current customers of Big E
15 Transportation in the Northeast region?

16 A. Right now we no longer have a contract to
17 provide services to Advance Auto.

18 Q. For how long has Estes Express --

19 A. Actually, let me back peddle a little on that.
20 We actually have dedicated contracts with Lord and
21 Taylor, we do their store replenishment, and we
22 also have Home Depot. But they are -- we run out
23 of the Northeast region for them as well, so doing
24 dedicated services in the northern Philly market,
25 Philly and northern Pennsylvania, so.

Keith Davis

33

1 Q. How much -- if you could provide a percentage, how
2 much percentage of Big E's business is dedicated to
3 servicing its Estes Express customer?

4 MR. SPOLYAR: Object to the form of
5 the question as requiring speculation and lacking
6 foundation. Go ahead.

7 A. I'm not sure.

8 Q. Do you know if it's 50 percent or more, 50 percent
9 or less?

10 A. I couldn't tell you.

11 Q. That's fine. That's fine. Regardless, Big E, its
12 customer base includes Estes Express, Lord and
13 Taylor, and Home Depot, as we sit here today?

14 A. Those are some of them.

15 Q. That's not an exhaustive list, but that's what you
16 can recall, as we sit here today?

17 A. In the Northeast region.

18 Q. In the Northeast region, correct.

19 A. And actually you can add Amazon to that list
20 because we just got the contract as well, so we run
21 Amazon now, too.

22 Q. Do you run contract delivery services right from
23 the warehouse in Fall River here?

24 A. No, sir. We actually, we run lanes from
25 there, actually from the -- I don't know if we

Keith Davis

38

1 Do you know of any other customers in the
2 New England market?

3 A. Yes.

4 Q. Could you tell me who they are?

5 A. Home Depot.

6 Q. Are there any other ones?

7 A. Right off the top of my head: Home Depot and
8 Estes Express Lines are two.

9 Q. There could be more?

10 A. There could be more.

11 Q. Do you know what percentage of business Estes
12 Express Lines brings to Big E in the New England
13 market?

14 MR. SPOLYAR: Object to the form of
15 the question as asked and answered and lack of
16 foundation. Go ahead.

17 A. I'm not sure of the percentages.

18 Q. We're just talking about the New England market,
19 not the Northeast region?

20 A. Okay.

21 Q. Once a determination is made that a particular
22 region and market requires contractor services,
23 what happens next?

24 A. We fill new contractors or get our current
25 contractors to put on additional drivers.

Keith Davis

39

1 Generally that's what -- that's what we,
2 as far as Big E, that's what -- +we'll go to our
3 current contractors, let them know that we have
4 additional business, see if they are interested in
5 the additional business. If they are, that
6 contractor will provide additional driver services
7 for us.

8 If they are not interested in the
9 additional business, then at that point we will
10 expand to find new contractors; additional
11 contractors.

12 Q. If a current contractor wants to take on the new
13 business, does that current contractor have to
14 enter into a new independent contractor operating
15 agreement?

16 A. No.

17 Q. How does a current contractor take on new business?

18 MR. SPOLYAR: Objection:
19 Speculation. Go ahead.

20 A. I don't understand.

21 Q. If a current contractor is under agreement to
22 provide driving services, and if that contractor
23 is, say at capacity in terms of the number of days
24 that that contractor works per week, you know, how
25 is it that that contractor takes on new work, or

Keith Davis

40

1 maybe the contractor can't take on new work?

2 A. That would be completely up to the contractor,
3 so, I can't answer that.

4 Q. Okay. Does the contractor -- would the contractor
5 hire drivers on his own?

6 A. Uh-huh.

7 Q. Is that common or you don't know?

8 A. As far as?

9 Q. As far as contractors hiring drivers?

10 A. Yeah, I mean it's common, contractors, they
11 generally hire their own drivers.

12 Q. It's common industry practice?

13 A. Uh-huh.

14 Q. Now, so is it the practice of Big E to go to its
15 current contractors first and ask if they want to
16 take on additional customer needs?

17 A. Yes. If the contractor has a footprint in
18 that market already, then, yes, we'll go to that
19 contractor and negotiate the additional business
20 that Big E has taken on; and if they are interested
21 in taking on the additional work, then they will
22 provide additional driver services; and if they are
23 not, then no hard feelings, we'll, you know,
24 continue searching for, you know, a contractor to
25 service the market.

Keith Davis

41

1 Q. When you say, "negotiate the additional work," what
2 do you mean by that?

3 A. Just give them an explanation of, oh, okay,
4 this is the additional business that Big E has been
5 awarded. Are you interested in it? And if you are
6 interested in it, you know, either, yes or no.
7 It's pretty self-explanatory. I mean, it's --

8 Q. Is there any negotiation for additional
9 compensation for additional business?

10 A. Yes. If there's any question about the
11 compensation or the rates for that particular
12 market then, yeah, we are going to discuss that as
13 well, that's normally the first question they ask.
14 So, what are the details and how much, what are
15 their rates.

16 Q. If there's a renegotiation on compensation, how is
17 that -- how is that memorialized? Is it
18 memorialized as an addendum to the contract?

19 A. Yes.

20 Q. Would that appear as an additional attachment to
21 the contract?

22 A. Yes.

23 Q. It wouldn't be an entirely new contract?

24 A. No.

25 Q. Now, if a decision was made to acquire additional

Keith Davis

43

1 it was determined that there was a need for
2 additional contractors, who would make the
3 cold-calls?

4 A. It would be our regional manager.

5 Q. In 2012, it would have been Mike Rail?

6 A. Yes.

7 Q. Mike Rail is no longer there; is that correct?

8 A. That's correct.

9 Q. Do you know who the current regional manager is
10 over there?

11 A. I'm currently overseeing it.

12 Q. You are?

13 A. Uh-huh.

14 Q. How long have you been overseeing it?

15 A. Since Mike Rail's departure.

16 Q. All right. When was that?

17 A. I want to say 2016.

18 Q. Do you have the reason for his departure?

19 A. Just a reduction in force; reduction in
20 business.

21 Q. So now making cold-calls would fall to you?

22 A. Uh-huh.

23 Q. And as silly as this sounds, who would post the
24 listing on Craig's List or some other forum for
25 drivers or for contractors?

Keith Davis

48

1 it really all depends -- like I said, it's
2 generally going to be in a hotel lobby though, so.

3 Q. In the course of retaining contractors for Big E in
4 the Northeast region and, in particular, the New
5 England market, do you know if any meetings between
6 Big E and potential contractors occurred at an
7 Estes Express terminal?

8 A. I don't know.

9 Q. That's something that may have happened or may not
10 have happened?

11 A. I guess it could have if -- I've never met
12 with any contractors at an Estes Express terminal,
13 but I can't speak for anybody else though.

14 Q. I understand you don't know one way or the other;
15 is that fair?

16 A. Yeah, I don't know.

17 Q. Once you've had an initial phone call with a
18 potential contractor and there's a -- there's a
19 mutual agreement to move forward, what happens
20 next?

21 A. Well, then we are going to send them the
22 contract or give them the contract and they are
23 going to sign it, or, you know, we'll negotiate if
24 there's any negotiation on the rates, we'll discuss
25 the rates and everything.

Keith Davis

50

1 who's going to fill out a contractor application
2 and it's submitted to -- it's submitted to our
3 corporate office where it's processed there.

4 Q. Is it submitted to Big E corporate office or Estes
5 Truckload Management?

6 A. Estes Truckload Management.

7 Q. Okay. I'm going to show you a document that's been
8 marked in a prior deposition as Exhibit 4, I'm
9 going to ask you if you recognize that document?

10 A. I do.

11 Q. Generally speaking, what is this document?

12 A. It is a contractor application.

13 Q. Okay, at what point in time -- is this -- strike
14 that.

15 Is it the form of application that's
16 currently being used by Big E Transportation?

17 A. Yes.

18 Q. At what point in time would a potential contractor
19 fill out this application?

20 A. Just at the beginning of the recruiting
21 process. After initial contact has been made and
22 discussed, the market, and background of their
23 company, what their -- what kind of services they
24 provide, and, you know, as long as the services
25 they provide are the services that we need for the

Keith Davis

51

1 actual market, then we are going to send this to
2 them and they are going to fill it out and send it
3 back to us.

4 Q. Do they fill this out before the background check
5 or after?

6 A. Before.

7 Q. And is this application also submitted to Estes
8 Truckload Management?

9 MR. SPOLYAR: Objection: asked and
10 answered. Go ahead.

11 A. Yes.

12 Q. And you testified, I think, correct me if I'm
13 wrong, that the corporate office handles the
14 background check, and you are not certain, as we
15 sit here today, what's involved in a background
16 check?

17 MR. SPOLYAR: Objection:
18 mischaracterizes the witness' testimony. Go ahead.

19 A. Yeah, I'm not involved in any of the
20 background process so I couldn't say either way.

21 Q. Regardless, that's handled by Estes Truckload
22 Express?

23 MR. SPOLYAR: Objection: asked and
24 answered, lacks foundation. Go ahead.

25 A. No.

Keith Davis

52

1 Q. Who handles the background check?

2 A. Estes Truckload Management, you said Estes
3 Truckload Express.

4 Q. Okay, all right. Do you know who at Estes
5 Truckload Management handles the background check?

6 A. We just have a compliance department, so no
7 general person.

8 Q. So you've met with the potential contractor, you --
9 the potential contractor has drafted an application
10 and then a background check has been performed, at
11 that point in time is that when you move to
12 negotiation of the contract and conversation?

13 A. Yes. Yup.

14 Q. Okay. If you could, if you know, could you
15 describe what aspects of the contract or performed
16 services is negotiated in terms of scope of work
17 and compensation?

18 MR. SPOLYAR: Objection: vague. Go
19 ahead.

20 A. I guess, generally, any portion of the
21 contract could be negotiated. Generally, we send
22 the contract -- whenever I send the contract to a
23 potential contractor, I'll e-mail it to them, and
24 give them the opportunity to look it over.

25 A lot of times I will take it to -- that

Keith Davis

53

1 contractor will take it to their personal attorney
2 and follow back up with any questions or concerns,
3 and if there's any negotiation that takes place,
4 then it will take place at that time, so.

5 Q. What are some of the terms, if you know, that are
6 typically negotiated in the contract?

7 A. I can't, I'm not sure of any specifics. Just
8 if a particular contractor has some concerns or
9 questions about certain terms, then we'll talk
10 about it and negotiate it, and, you know, move
11 forward from there. I just can't speak of any --

12 Q. Changes contractor to contractor, I'm sure?

13 A. Yes, oh, yeah.

14 Q. Now, do you know how Estes Express makes a
15 determination as to whether to use contractors
16 provided by Big E or employees of Estes Express in
17 making deliveries?

18 MR. SPOLYAR: Object to the form of
19 the question as lack a foundation. Go ahead.

20 A. I don't know actually how Estes Express Lines
21 determine it. Big E provides specialized services
22 for Estes that would require residential -- mostly
23 residential deliveries, that would require a box
24 truck with lift gate, so I can only speak on the
25 services that Estes Express pays Big E to provide.

Keith Davis

56

1 Q. And if a contractor fails, in any respect, to
2 obtain those insurance certificates, is a contract
3 terminated, or at this point we're not at contract,
4 so you just give a potential contractor the
5 opportunity to get his or her ducks in a row?

6 A. Generally, if -- yeah, if they don't have the
7 minimum coverages, then we'll let them know this is
8 what is required to take on the contract, and that
9 contractor can make the decision if they need to
10 get the minimum coverages to take on the contract
11 or they don't, you know.

12 Q. Does Big E require the certificate of insurance
13 that you just described from a particular insurer,
14 or is it at the contractor's discretion to obtain
15 insurance from whatever provider they can find?

16 A. That's correct, it's at the contractor's
17 discretion, so --

18 Q. Exhibit 5 refers to a driving record from state
19 agencies. Do you know if, as we sit here today,
20 whether Big E requires that of potential
21 contractors?

22 A. If a contractor is operating up under Big E
23 authority, DOT authority, then, yes, it is
24 required.

25 Q. And if they are operating under their own

Keith Davis

57

1 authority?

2 A. It's not required.

3 Q. And I'll ask the same question with respect to
4 Exhibit 5, which requests annual driver's
5 certification of violations, is that something that
6 Big E requires, as we sit here today, for those
7 contractors operating under Big E's authority?

8 A. Yes. If the contractor operates under Big E's
9 authority, DOT's authority, then, yes, it is
10 required.

11 Q. If a contractor is operating under its own
12 authority, then it's not required?

13 A. It's not required.

14 Q. There's reference to a driver's road test
15 certificate or equivalent, is that something that
16 Big E would require, as we sit here today, if a
17 contractor was operating under Big E's authority?

18 A. Yes.

19 Q. And how about if the contractor was operating under
20 its own authority?

21 A. No.

22 Q. Exhibit 5 further refers to a medical exam and
23 certificate, is that something that Big E would
24 require from a contractor operating under its own
25 authority?

Keith Davis

58

1 A. I'm sorry, one more time. Up under their own
2 authority?

3 Q. Up under Big E's own authority, yeah?

4 A. If the contractor is operating under a Big E
5 authority then it would be a requirement. If they
6 are operating on their own, then, no.

7 Q. Are contractors operating under Big E's authority
8 required to obtain a medical examination?

9 A. Just to rephrase your question, every
10 commercial driver has to have a medical
11 examination, they have to carry a medical card.

12 Q. That's drivers in the industry regardless of
13 whether they are driving for Big E --

14 A. Or anyone. If they are providing commercial
15 driver's services, by federal law they have to have
16 one.

17 Q. Okay. That's a certificate that's carried by
18 drivers?

19 A. Yes.

20 Q. How long is that certificate good for?

21 A. Anywhere from six months to two years
22 depending on a particular driver's health
23 background.

24 Q. Okay. If a certificate lapses during a
25 contractor's contract with Big E, what happens?

Keith Davis

62

1 FMCSA, so.

2 Q. Are those, if you know, are the federal regulations
3 that the contractors are required to comply with,
4 are they memorialized in the contract that Big E
5 uses with its independent contractors?

6 MR. SPOLYAR: Objection: legal
7 conclusion, lacks foundation. Go ahead.

8 A. Not that I'm aware of.

9 Q. Okay. It could be memorialized there or it could
10 not be, you are just not aware?

11 A. I am just not aware.

12 Q. Again, you didn't draft the document, correct?

13 A. Correct.

14 Q. All right. So a driver has -- I'm sorry, a
15 contractor has been cleared to perform services
16 as -- for Big E, what happens next in terms of,
17 does the driver just show up to a particular market
18 and location?

19 MR. SPOLYAR: Foundation,
20 speculation. Go ahead.

21 A. Yes, they are. At that point once the
22 contractor is ready to start, the contractor is
23 going to be provided with the details of the work,
24 and the contractor will carry out that work.

25 Q. And who provides the contractor with the details of

Keith Davis

63

1 the work?

2 A. It would be the regional manager.

3 Q. And as we sit here today, for the Northeast region
4 that would be you?

5 A. Uh-huh.

6 Q. And in 2012, that would have been Mike Rail?

7 A. Yes, sir.

8 Q. And when you say, "details of the work," what do
9 you mean by that?

10 A. Just the scope of the services that Big E
11 would be providing to their particular customer.

12 Q. And how would those details be given, over the
13 phone, in an e-mail?

14 A. It could be in person, it could be over the
15 phone, it could be an e-mail, it could be any form
16 of communication.

17 Q. Is it possible that a contractor could be secured
18 or retained to provide services for one particular
19 customer in a region?

20 A. Yeah, to provide dedicated services?

21 Q. Yes.

22 A. They could, yeah.

23 Q. Is that common, uncommon?

24 A. I guess it's about 50 percent. I mean, it
25 really depends on what customers are being serviced

Keith Davis

71

1 You know, as far as the freight that they
2 couldn't handle, it would be up to the customer to
3 manage that, and I'm sure that the customer would
4 reach out to our team and say, hey, you know, we
5 need some additional services. And at that point
6 it would be, you know, up to our team to, you know,
7 try and manage to do that.

8 Q. With respect to Estes Express as a customer, do you
9 know if, at that point in time, Estes Express would
10 contact Big E for additional services, or whether
11 they would use their own services?

12 A. It's completely up to the customer, so.

13 Q. So in my example, the contractor or driver is at
14 the Estes Express customer terminal to pick up a
15 delivery, is that delivery given to that driver or
16 owner/operator by the manager, the on-site manager?

17 A. Obviously, the freight is going to be tendered
18 from a point of contact from the customer, so at
19 some point the freight is going to be tendered to
20 that driver.

21 Q. It could be the on-site manager, or it could be an
22 employee of the customer?

23 A. Yeah, exactly.

24 Q. Who physically loads the truck?

25 A. The contractor would load the truck.

Keith Davis

72

1 Q. And who determines in what manner the freight gets
2 delivered?

3 MR. SPOLYAR: Objection: vague. Go
4 ahead.

5 A. The contractor is going to plan their
6 deliveries, what best suits their route, their
7 efficiency, their fuel, whatever has to do with
8 their internal business.

9 Q. Okay. In the Northeast market and more particular
10 the Estes Express customer terminal in Seekonk, do
11 you know if they have any special requirements of
12 Big E in transporting deliveries and freight,
13 special requests?

14 A. What do you mean?

15 Q. In terms of, we want? For instance, freight to be
16 delivered, handled in a certain manner to its end
17 point?

18 A. Obviously, there's a level of expectation that
19 the freight is being handled with integrity, so
20 that goes without saying no matter what company,
21 what provider, whoever it is. I mean, you order
22 something, you want your freight to be handled with
23 integrity, so there's a level of expectation there
24 for sure.

25 Q. So I've gotten to the point where a contractor

Keith Davis

73

1 driver has freight onboard and is ready for
2 delivery, and again, I'll use the Estes Express
3 customer in Seekonk as a point of reference.

4 What happens during the process of
5 delivery, and let me qualify that or explain
6 further by asking: By what means does the
7 contractor or driver keep track of deliveries and
8 the manner and order in which they are done?

9 A. That's going to be completely up to the
10 contractor with, you know, how they load the
11 freight, where do they load the freight. So it's
12 really at the contractor discretion, so.

13 Q. With respect to the Estes Express customer in
14 Seekonk, is there any type of manifest or delivery
15 ticket that's maintained with the freight?

16 A. Yeah. So any shipment that's tendered to the
17 contractor is going to have a delivery receipt for
18 that particular shipment, which is what the
19 contractor is going to utilize, and have the
20 customer sign whenever the delivery is completed.

21 Q. Aside from a delivery receipt, is there any
22 other -- excuse me, is there any other manner in
23 which a contractor or driver would keep track of
24 deliveries of shipment for the Estes Express
25 customer in Seekonk?

Keith Davis

74

1 A. What do you mean? Can you repeat the question
2 one more time?

3 Q. Aside from the delivery receipt, is there any other
4 method or means that the contractor or driver would
5 keep track of deliveries for the Estes Express
6 customer?

7 A. As far as what shipments that driver picked up
8 from the customer that day.

9 Q. In terms of what shipments that customer that
10 contractor or that driver picked up from Estes
11 Express, say in the morning, and delivered
12 throughout the day?

13 A. Well, they are going to -- the contractor,
14 like I said, is going to be given the delivery
15 receipts and they will have a -- they will also be
16 given a manifest. I'm not sure if that's what
17 you're looking for. They will be given a manifest,
18 they will also list each particular delivery that
19 was picked up that day. As far as how the
20 contractor manages his internal billing or how that
21 contractor keeps track of his, the deliveries that
22 his business has made is up to him, I don't know.

23 Q. I'm looking in terms of how a contractor or driver
24 would keep track on behalf of the customer? So, I
25 don't know, if -- is there a, you know, a computer

Keith Davis

75

1 you see?

2 For example, UPS drivers, they come
3 around with their little pads, and they want you to
4 sign off on your name or something like that, and I
5 imagine that keeps track of, all right, this
6 verifies that everything has been delivered as it's
7 supposed to.

8 My question is: Aside from the paper,
9 what I imagine is a paper delivery receipt and a
10 paper manifest, is there any other tracking means
11 that are used by contractors or drivers?

12 A. I guess, that would -- if it was provided, it
13 would be provided at the discretion of the
14 contractor for their drivers, so --

15 Q. That's not a -- that's not something that Estes
16 Express, as a customer, would require of Big E's
17 contractors?

18 A. No.

19 Q. That's not something that Big E would require for
20 its contractors?

21 A. No.

22 Q. So once everything is delivered -- and again, I'm
23 going to use Estes Express Lines as an example,
24 once everything is delivered on behalf of the
25 customer, what does the contractor, driver do then?

Keith Davis

76

1 A. As far as?

2 Q. If he's got an empty truck?

3 A. Once he finishes his obligations, who knows,
4 it's up to the contractor on what he does.

5 Q. Does he have to take delivery receipts or manifests
6 anywhere?

7 A. The manifest would, obviously, be up to the
8 contractor on what they did with that. Copies of
9 the delivery receipts that show the completed
10 delivery would be returned to the customer, so to
11 Estes Express Lines.

12 Q. Okay. Does the contractor or driver have to --
13 contractor or driver have to return those
14 immediately or?

15 A. No.

16 Q. When a contractor or driver returns that paperwork,
17 is that something that's set by the driver,
18 contractor, Big E, or the customer?

19 MR. SPOLYAR: Objection: vague.

20 A. What do you mean?

21 Q. Obviously, the delivery receipts have to get back
22 to the customer, correct?

23 A. Yes.

24 Q. The timeframe in doing that?

25 A. In doing that?

Keith Davis

77

1 Q. Yes. Is that something that's set by the customer,
2 Big E, or is that left to the discretion of the
3 contractor, driver?

4 A. It's up to the discretion of the contractor on
5 when, you know, him or his driver, the contractor
6 or his driver, returns the paperwork to the
7 customer.

8 Obviously, the freight that was delivered
9 cannot be invoiced to the final-mile customer until
10 that paperwork has been received back, the delivery
11 has been confirmed that the delivery was made
12 successfully.

13 So, obviously, if there was some time
14 that passed our customer is going to be requesting
15 an update on that paperwork. So is there a
16 specific time -- this has to be back by this time,
17 no, but, you will not be paid until we have
18 confirmation; until the customer has confirmation
19 that the delivery was made. So, you know,
20 obviously, if the contractor wants to be paid he's
21 going to expedite that paperwork to expedite his
22 billing.

23 Q. Now, Estes Express is a customer of Big E, correct?

24 A. Uh-huh.

25 Q. Is there a contract between Estes Express and Big E

Keith Davis

80

1 for contractors, and going through that process
2 that we've discussed to final placement of GCC
3 Moving and Gary Cook at whatever customer needed
4 them?

5 MR. SPOLYAR: Objection: Object to
6 the form of the question as mischaracterizing the
7 witness' testimony. Go ahead.

8 A. Could you repeat it one more time, sorry?

9 MR. SPOLYAR: Just give me a chance
10 to get in.

11 Q. Is it fair to say that the process that we've
12 discussed today in terms of determining whether
13 there is a need for a contractor, in a particular
14 market, through the solicitation, background check,
15 application, et cetera, to the final placement of a
16 contractor at a particular market to service a
17 customer, is it fair to say, that process that
18 we've discussed today, would have been the same in
19 2012, as it relates to GCC Moving and Gary Cook as
20 it is today?

21 MR. SPOLYAR: Object to the form of
22 the question as mischaracterizing the witness'
23 testimony. Now you can go ahead.

24 A. Yes, it's the same as what we discussed,
25 nothing has changed.

Keith Davis

82

1 carries over, so.

2 Q. Now, I'll point you to Exhibit 2, and ask if you
3 recognize that document?

4 A. (Witness perusing document.) Okay.

5 Q. And that's also a contract between Big E and GCC
6 Moving, correct?

7 A. Yes.

8 Q. Do you know if that contract has been terminated?

9 A. I believe so, yes.

10 Q. I'll represent to you, and you can correct me if
11 I'm wrong, it would appear that that contract was
12 executed in 2015; is that correct?

13 A. Yes.

14 Q. Did you have any role in the execution of this
15 contract on behalf of Big E and Gary Cook?

16 A. As far as? Explain a little bit further.

17 Q. In terms of negotiating the contract, scope of
18 work, compensation, and the like?

19 A. Yeah. The only thing that changed between
20 this contract and this contract was that GCC was
21 operating up under BE Authority; up under this
22 contract, and up under this contract, GCC was
23 operating under their own authority.

24 Q. Exhibit 2, 2015?

25 A. Yeah, the most recent signed contract was.

Keith Davis

83

1 Q. Do you know why the contract ended?

2 A. With?

3 Q. With GCC Moving?

4 A. Just reduction in markets, business levels,
5 reduced, which resulted in termination of the
6 contract.

7 Q. Do you know if GCC Moving had any drivers working
8 for it under the 2015 agreement?

9 A. What do you mean?

10 Q. Did GCC Moving have any -- did it employ any
11 drivers under that, under the 2015 agreement?

12 A. I don't know if he had -- I mean, yeah, of
13 course, he had drivers. He was providing -- GCC
14 was providing Big E with driver services, so, yes.

15 Q. Independent of owner/operator type of services, did
16 Big E, or did GCC have any other drivers that were
17 performing services for it, if you know?

18 A. I don't know.

19 Q. As we discussed earlier, how Big E will engage
20 contractors to perform services, and those
21 contractors may have drivers that actually perform
22 services on behalf of the contractor and fulfilling
23 the contract; is that accurate?

24 A. Yes.

25 Q. I'm just trying to figure this out. Do you know at

C E R T I F I C A T E

I, PATRICIA QUIRK, a Notary Public in and for the State of Rhode Island and the Commonwealth of Massachusetts, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to rules of Civil Procedure of this Court, especially but without restriction thereto, under Rules 29 and 30(b)(4) of said Rules; that the witness was first sworn by me; that the transcript contains a true record of the proceedings.

Reading and signing of the transcript was not requested by the deponent or any parties involved upon completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand
this day of _____, 2017

PATRICIA QUIRK, CSR
NOTARY PUBLIC/CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES 12/11/2017

CORRECTION SHEET/ERRATA SHEET

Case Name: GCC Moving, LLC and GARY COOK d/b/a GCC Moving v.
ESTES EXPRESS LINES, CORP. d/b/a, alias, BIG E
TRANS
Date of Deposition: August 17, 2017
Deponent: Keith Davis

I, Keith Davis, do hereby certify that I have read the foregoing statement and that, to the best of my knowledge, said statement is true and accurate (with the exception of the following changes listed below:

Pg. No. Line No. CHANGE TESTIMONY TO READ AS FOLLOWS:

16 4-5 Chris Seng has always been an owner operator.

Dated: Oct. 30 2017

Keith Davis
Keith Davis